

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

May 23, 2022

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CANDICE V.,

Plaintiff,

v.

KILOLO KIJAKAZI, Commissioner of
Social Security,

Defendant.

No. 1:20-cv-03236-SMJ

**ORDER ON CROSS MOTIONS
FOR SUMMARY JUDGMENT**

Plaintiff C.V. appeals the Administrative Law Judge's (ALJ) denial of her application of disability benefits. She alleges that the ALJ erred by (1) improperly evaluating the medical opinion evidence; (2) failing to conduct an adequate evaluation at step three; (3) rejecting Plaintiff's subjective complaints; and (4) failing to conduct an adequate analysis at step five. ECF No. 19. Defendant disputes these contentions and asks the Court to affirm the ALJ's determination. ECF No. 20.

Before the Court, without oral argument, are the parties' cross-motions for summary judgment. ECF Nos. 19–20. After reviewing the administrative record, the parties' briefs, and the relevant legal authority, the Court is fully informed. For the reasons discussed below, the Court remands to the Social Security

Administration for additional proceedings.

PROCEDURAL HISTORY¹

Plaintiff protectively filed for disability on June 5, 2018, alleging an onset date of July 13, 2016. AR 15, 178. Plaintiff's application was denied on October 18, 2018 and denied again upon reconsideration. AR 15. Thereafter, Plaintiff requested a hearing before an Administrative Law Judge ("ALJ"). On September 23, 2020, ALJ Chris Stuber held a hearing and subsequently issued an unfavorable decision. AR 15–23. Plaintiff petitioned the Appeals Counsel for review of the ALJ's decision, and the Appeals Council denied review on October 13, 2020. AR 1–3. Plaintiff now petitions this Court for review of the ALJ's decision denying disability benefits. ECF No. 1.

DISABILITY DETERMINATION

A "disability" is defined, for the purposes of receiving disability insurance benefits, as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A).

¹ The facts of the case are set forth in the administrative record and the parties' briefs. *See* ECF Nos. 12, 19, 20, 21. The parties have discussed any additional relevant facts in their briefing. *See generally id.* The Court thus provides only a short procedural summary here.

1 The ALJ uses a five-step sequential evaluation process to determine whether a
2 claimant qualifies for disability benefits. 20 C.F.R. §§ 404.1520, 416.920.

3 At step one, the ALJ considers the claimant's work activity, if any. 20 C.F.R.
4 §§ 404.1520(a)(4)(i), (b), 416.920(a)(4)(i), (b). If the claimant is doing any
5 substantial gainful activity, the ALJ will find the claimant not disabled and deny
6 their claim. *Id.* If the claimant is not doing any substantial gainful activity, the
7 evaluation proceeds to step two.

8 At step two, the ALJ considers the medical severity of the claimant's
9 impairment(s). 20 C.F.R. §§ 404.1520(a)(4)(ii), (c), 416.920(a)(4)(ii), (c). If they
10 do not have a severe medically determinable physical or mental impairment that
11 meets the twelve-month duration requirement in Section 404.1509, or a
12 combination of impairments that is severe and meets the duration requirement, the
13 ALJ will find the claimant not disabled and deny their claim. *Id.* If the claimant
14 does have a severe physical or mental impairment, the evaluation proceeds to step
15 three.

16 At step three, the ALJ also considers the medical severity of the claimant's
17 impairment(s). 20 C.F.R. §§ 404.1520(a)(4)(iii), (d), 416.920(a)(4)(iii), (d). If they
18 have an impairment(s) that meets or equals one of the Social Security
19 Administration's listings in appendix 1 of this subpart and meets the duration
20 requirement, the ALJ will find the claimant disabled. *Id.*; 404 Subpt. P App. 1. If

1 their impairment(s) does not meet or equal a listed impairment, the evaluation
2 proceeds to step four.

3 At step four, the ALJ considers the claimant's residual functional capacity
4 and their past relevant work. 20 C.F.R. §§ 404.1520(a)(4)(iv), (e),
5 416.920(a)(4)(iv), (e). If they can still do their past relevant work, the ALJ will find
6 the claimant not disabled and deny their claim. *Id.*; *see also* §§ 416.920(f), (h),
7 416.960(b). If they cannot, the evaluation proceeds to step five.

8 At the fifth and final step, the ALJ considers the claimant's residual
9 functional capacity and their age, education, and work experience to see if they can
10 adjust to other work. 20 C.F.R. §§ 404.1520(a)(4)(v), (f), 416.920(a)(4)(v), (f). If
11 they can adjust to other work, the ALJ will find the claimant not disabled and deny
12 their claim. *Id.* If they cannot, the ALJ will find the claimant disabled and grant
13 their claim. *Id.*; *see also* §§ 404.1520(g), (h), 404.1560(c).

14 The burden shifts during this sequential disability analysis. The claimant has
15 the initial burden of establishing a prima facie case of entitlement to benefits.
16 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971). If the claimant makes such
17 a showing, the burden then shifts to Defendant to show work within the claimant's
18 capabilities. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984); *see also* SSR 13-
19 2P, 2013 WL 621536, at *4 ("The claimant has the burden of proving disability
20 throughout the sequential evaluation process. Our only burden is limited to

1 producing evidence that work the claimant can do exists in the national economy at
2 step 5 of the sequential evaluation process.”). To find a claimant disabled, their
3 impairments must not only prevent them from doing their previous work, but also
4 (considering their age, education, and work experience) prevent them from doing
5 any other substantial gainful work that exists in the national economy. *Id.*; 42 U.S.C.
6 §§ 423(d)(2)(A), 1382c(a)(3)(B).

7 **ALJ FINDINGS**

8 At step one, the ALJ found that Plaintiff had not engaged in substantial
9 gainful activity since June 5, 2018, the date she applied for benefits. AR 17.

10 At step two, the ALJ found that Plaintiff suffered from severe impairments,
11 including: cervical spine disorder, loss of lordosis, right shoulder impingement,
12 status post rotator cuff repair, and subsequent arthropathy. *Id.*

13 At step three, the ALJ found that Plaintiff “does not have an impairment or
14 combination of impairments that meet or medically equals the severity of one of the
15 listed impairments.” *Id.*

16 At step four, the ALJ found that Plaintiff has the residual functional capacity
17 to perform light work as defined in 20 C.F.R. 416.967(b) and has no past relevant
18 work. AR 18, 21.

19 At step five, the ALJ found that Plaintiff could perform other work existing
20 in significant numbers in the national economy and thus was not disabled. AR 22.

1 Based on the ALJ's determination that Plaintiff has the residual functional
2 capacity to perform light work subject to certain limitations, the ALJ determined
3 that Plaintiff could perform the requirements of representative occupations such as
4 office helper, collator operator, and furniture rental consultant. AR 22.

5 STANDARD OF REVIEW

6 Reviewing courts must uphold an ALJ's disability determination if it applied
7 the proper legal standards and supported its decision with substantial evidence in
8 the record. *Molina v. Astrue*, 674 F.3d 1104, 1110 (9th Cir. 2012), *superseded by*
9 *regulation on other grounds*. "Substantial evidence 'means such relevant evidence
10 as a reasonable mind might accept as adequate to support a conclusion.'" *Id.*
11 (quoting *Valentine v. Comm'r Soc. Sec. Admin.*, 574 F.3d 685, 690 (9th Cir. 2009)).
12 "[W]hatever the meaning of 'substantial' in other contexts, the threshold for such
13 evidentiary sufficiency is not high." *Biestek v. Berryhill*, 139 S. Ct. 1148, 1153
14 (2019). The ALJ must base its determination on "more than a mere scintilla" of
15 evidence, *id.* at 1154, but need not support its decision by a preponderance of the
16 evidence. *Molina*, 674 F.3d at 1111. If the evidence supports more than one rational
17 interpretation, and the ALJ has supported its decision with inferences drawn
18 reasonably from the record, the Court must uphold its decision. *Id.*; *Allen v. Heckler*,
19 749 F.2d 577, 579 (9th Cir. 1984).

20 Moreover, the Court will not reverse an ALJ's decision if it committed

1 harmless error. *Molina*, 674 F.3d at 1111. The burden to show harmful error lies
2 with the party challenging the ALJ’s determination. *See Shinseki v. Sanders*, 556
3 U.S. 396, 409 (2009).

4 DISCUSSION

5 A. Medical opinion evidence

6 The Ninth Circuit recognized a hierarchy among the sources of medical
7 opinions, known as the treating physician rule or the treating source rule, for claims
8 filed before March 27, 2017.² *Murray v. Heckler*, 722 F.2d 499 (9th Cir. 1983); *see*
9 *also* 82 Fed. Reg. 5844, 5853 (Jan. 18, 2017); *Black & Decker Disability Plan v.*
10 *Nord*, 538 U.S. 822, 829 (2003). Specifically, the ALJ must articulate “specific and
11 legitimate reasons supported by substantial evidence in the record” in order to
12 “reject the treating doctor’s ultimate conclusions” when the treating doctor’s
13 opinion was contradicted by another doctor, or “clear and convincing reasons” if it
14 was not. *Lester v. Chater*, 81 F.3d 821, 830–31 (9th Cir. 1995).

15 In 2017, the Commissioner promulgated new regulations, effective for claims
16 filed on or after March 27, 2017, such as Plaintiff’s. *See* 20 C.F.R. § 404.1520c.
17 These regulations make several changes which are relevant here. For instance, the
18 regulations alter the definition of “medical opinion” and the way that the ALJ
19

20 ² The regulations were updated in 2017 to eliminate this hierarchy for new claims.
See 20 C.F.R. § 404.1520c.

considers and articulates their consideration of medical opinions. 20 C.F.R. § 404.1520c(a)–(c). The ALJ now considers the persuasiveness of a medical opinion using five factors: (1) supportability; (2) consistency; (3) relationship with claimant;³ (4) specialization; and (5) other. 20 C.F.R. § 404.1520c(c). Because the first two factors are the most important, the ALJ *must* articulate their analysis as those two factors. 20 C.F.R. § 404.1520c(b)(2). The new regulations eliminate the hierarchy of medical opinions and the treating physician rule. 20 C.F.R. § 404.1520c(a); *see also* 82 Fed. Reg. at 5853.

1. Brady Moss, ARNP

Plaintiff argues that the ALJ improperly evaluated the medical opinion of Plaintiff's treating provider, ARNP Brady Moss ("ARNP Moss"). ECF No. 19 at 9–14. At the hearing, the ALJ heard testimony from ARNP Moss, who opined that Plaintiff is limited to sedentary work. AR 21. In finding ARNP Moss' opinion unpersuasive, the ALJ stated:

The medical evidence does not support his opinion since the June 2019 surgery. Treatment notes show progressive improvement in symptoms and overall functioning of the right upper extremity. She demonstrated full strength and near full right shoulder range of motion. She otherwise displayed relatively benign exam findings.

AR 21.

³ This factor encompasses several subfactors, including length of the treatment relationship, frequency of examinations, purpose of the treatment relationship, extent of the treatment relationship, and the existence of an examining relationship. 20 C.F.R. § 404.1520c(c)(3)

1 Plaintiff submits that the ALJ erred in failing to mention two instances in
2 which ARNP Moss treated Plaintiff and found her severely limited in her right
3 upper extremity and opined that Plaintiff is restricted to sedentary work with no
4 grasping or performance of fine motor movements with the right hand. In the first
5 of these instances, on September 26, 2017, Plaintiff presented to ARNP Moss for a
6 disability examination, the results of which showed right shoulder tenderness,
7 moderate pain with motion, decreased sensation to her right hand, severe limitations
8 in right shoulder abduction, extension, and an inability to do full anterior extension.
9 AR 379. ARNP Moss then filled out a Documentation Request Form for Medical
10 of Disability Condition. AR 253–55. On the Form, ARNP Moss limited Plaintiff to
11 sedentary work, noting that Plaintiff has a “severe limitation in [right upper
12 extremity] and is ‘unable to lift, carry, push, pull > 10 lbs,’ and is ‘unable to perform
13 fine motor movements in [right] hand.’” AR 253. In the second instance, on
14 September 20, 2018, Plaintiff again presented to ARNP Moss for examination, the
15 results of which showed similar limitations. AR 265. ARNP Moss diagnosed
16 Plaintiff with severe right shoulder impingement and again opined that Plaintiff is
17 limited to sedentary work, noting that Plaintiff had exhausted all medical treatments
18 and reached maximum medical improvement. AR 262–63.

19 After these examinations, Plaintiff underwent surgery in June of 2019. AR
20 21. Several months later, in September of 2019, Plaintiff again presented to ARNP

1 Moss for a disability examination. AR 456. ARNP Moss again opined that Plaintiff
2 had severe limitations in her right upper extremity and other resulting limitations
3 and limited Plaintiff to sedentary work. AR 456–57. In May 2020, ARNP Moss
4 completed a medical source statement, diagnosing Plaintiff with chronic
5 impingement of her right shoulder, noting radiating pain, and opining that Plaintiff
6 has a poor prognosis to improve and that requiring Plaintiff to regularly use her
7 right upper extremity may worsen her condition. AR 531. He further opined that
8 Plaintiff is “severely limited,” meaning that Plaintiff is unable to perform the
9 demands of even sedentary work. AR 532.

10 The Court agrees with Plaintiff that the ALJ failed to sufficiently articulate a
11 supporting explanation for discounting ARNP Moss’ assessment due to Plaintiff’s
12 improvement after surgery. First, the medical record is replete with conflicting
13 evidence regarding the extent of Plaintiff’s improvement following her surgery. On
14 one hand, medical notes prepared by Doctor Roy Pierson on September 24, 2019
15 attest that Plaintiff has a near full range of motion in her right shoulder and
16 impingement testing was negative. AR 514. But physical therapy notes from
17 October 25, 2019 indicate that Plaintiff continues to suffer from ongoing discomfort
18 and “continues to be limited with heavy stressed activities for right upper extremity
19 and to her low back.” AR 503–04.

1 On this point, the Court notes that the ALJ did not explain why these notes
2 were more persuasive than ARNP Moss' and other providers' post-surgery medical
3 notes indicating continued restrictions in Plaintiff's upper right extremity. The
4 Court also remarks that ARNP Moss was Plaintiff's treating provider before
5 Plaintiff's alleged onset date, and his treatment notes have remained consistent
6 throughout his treatment of Plaintiff. The Court also notes that the ALJ did not
7 provide a reason for discounting ARNP Moss' medical opinion prior to Plaintiff's
8 June 2019 surgery, as Plaintiff alleges an onset date almost three years prior to her
9 surgery. Here, the Court agrees with Plaintiff that the ALJ failed to adequately
10 explain the supportability and consistency of ARNP Moss' medical opinion, and
11 the Court remands on this basis. *See* 20 C.F.R. § 404.1520c(b)(2).

12 **B. The ALJ did not provide an adequate explanation at step three**

13 At step three, the ALJ found that Plaintiff's impairments did not satisfy the
14 requirements of any listing. AR 17–18. At this step, Plaintiff contends that the ALJ
15 erred by “fail[ing] to cite any evidence or conduct any evaluation” in finding that
16 Plaintiff's impairments do not meet or medically equal any listing. ECF No. 19 at
17 14.

18 Plaintiff bears the burden of proving that she suffers from an impairment that
19 meets or equals the criteria of a listed impairment. *Burch v. Barnhart*, 400 F.3d 676,
20 683 (9th Cir. 2005). To do so, Plaintiff must “specify which listing she believes she

1 meets or equals,” and must “set forth [] evidence which would support the diagnosis
2 and findings of a listed impairment.” *Id.* “A boilerplate finding is insufficient to
3 support a conclusion that a claimant’s impairment” does not meet or equal a listed
4 impairment. *Lewis v. Apfel*, 236 F.3d 503, 512 (9th Cir. 2001).

5 Here, the ALJ considered Listings 1.02 and 1.04, and the effects of Plaintiff’s
6 obesity. AR 17. In determining Plaintiff’s impairments failed to satisfy these
7 listings, the ALJ stated:

8 The undersigned considered the claimant’s impairments under listings
9 1.02, 1.04 and the effects of obesity pursuant to SSR 19-2p. However,
10 the record does not establish the medical signs, symptoms, laboratory
11 findings or degree of functional limitation required to meet or equal
12 the criteria of any listed impairment and no acceptable medical source
13 designated to make equivalency findings has concluded that the
14 claimant’s impairment(s) medically equal a listed impairment. The
15 claimant’s right upper extremity impairment does not result in an
16 inability to perform fine and gross movements effectively. There is no
17 evidence of nerve root compression, spinal arachnoiditis, or lumbar
18 spinal stenosis resulting in pseudoclaudication resulting in an inability
19 to ambulate effectively.

20 AR 22.

21 This articulation is insufficient for the Court to meaningfully evaluate
22 whether the ALJ’s finding is supported by substantial evidence. “[I]n determining
23 whether a claimant equals a listing under step three of the Secretary’s disability
24 evaluation process, the ALJ must explain adequately his evaluation of alternative
25 tests and the combined effects of the impairments.” *Marcia v. Sullivan*, 900 F.2d
26 172, 176 (9th Cir. 1990). At this Step, other than noting that the evidence does not

1 show nerve root compression and other ailments, the ALJ did not explain why
2 Plaintiff's right upper extremity prevents her from performing fine and gross motor
3 movements effectively.

4 Defendant submits that the ALJ's explanation at this step was sufficient
5 because he adequately discussed the evidence and explained his findings at later
6 steps. *See* Lewis, 236 F.3d at 513 (“*Marcia* simply requires an ALJ to discuss and
7 evaluate the evidence that supports his or her conclusion; it does not specify that
8 the ALJ must do so under [a specific heading]).”

9 After review of the ALJ's decision and both parties' briefing, it is entirely
10 unclear to the Court what is required to establish either listing or whether Plaintiff's
11 impairments establish the requirements. The ALJ simply noted that he “considered
12 the claimant's impairments under listings 1.02, 1.04” and that “the record does not
13 establish the medical signs, symptoms, laboratory findings or degree of functional
14 limitation required to meet or equal the criteria of any listed impairment.” AR 22.
15 Yet at no point does the ALJ discuss the criteria or how Plaintiff's impairments
16 relate to the criteria. Defendant's argument that the ALJ adequately discussed his
17 findings at step four is unavailing, as nowhere in the ALJ's discussion, either at step
18 three or step four, does he indicate the specific criteria for either listing, which
19 subparts he considered, or how Plaintiff's impairments relate to the criteria. As
20 such, the Court cannot meaningfully review the ALJ's findings at this step and

1 certainly cannot say the ALJ's decision is supported by substantial evidence. To be
2 sure, the Court does not express any opinion as to whether Plaintiff satisfies either
3 listing. On remand, the ALJ shall list the relevant criteria for both listings and shall
4 discuss how Plaintiff's impairments relate to each relevant requirement.

5 **C. Assessment of Plaintiff's subjective complaints**

6 Next, Plaintiff assigns error to the ALJ's decision to discount Plaintiff's own
7 subjective symptom testimony. ECF No. 19 at 15. Defendant contends the ALJ gave
8 four clear and convincing reasons for discounting Plaintiff's subjective symptom
9 testimony. ECF No. 20 at 14.

10 Where a claimant presents objective medical evidence of impairments that
11 could reasonably produce the symptoms complained of, an ALJ may reject the
12 claimant's testimony about the severity of his symptoms only for "specific, clear
13 and convincing reasons." *Burrell v. Colvin*, 775 F.3d 1133, 1137 (9th Cir. 2014).
14 The ALJ's findings must be sufficient "to permit the court to conclude that the ALJ
15 did not arbitrarily discredit claimant's testimony." *Tommasetti v. Astrue*, 533
16 F.3d 1035, 1039 (9th Cir. 2008). General findings are insufficient. *Lester v.*
17 *Chater*, 81 F.3d 821, 834 (9th Cir. 1995). In evaluating the claimant's credibility,
18 the "ALJ may weigh inconsistencies between the claimant's testimony and his or
19 her conduct, daily activities, and work record, among other factors." *Bray v.*
20 *Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1227 (9th Cir. 2009). The Court may

1 not second guess the ALJ's credibility findings that are supported by substantial
2 evidence. *Tommasetti*, 533 F.3d at 1039.

3 Here, the ALJ provided four reasons for discounting Plaintiff's subjective
4 symptom testimony: (1) Plaintiff's allegations were inconsistent with the medical
5 record, (2) several evaluations, both pre-and-post surgery, show Plaintiff's physical
6 impairments were not as limiting as she asserts, (3) Plaintiff's pursuit of a teaching
7 degree undermined her allegation that she was unable to work, and (4) that
8 Plaintiff's limited work history undermines the persuasiveness of her allegations
9 that his impairments prevent her from working because they suggest Plaintiff has
10 simply chosen not to work. AR 21–24.

11 As to the first two reasons, the ALJ found that despite Plaintiff's complaints,
12 the medical record, as early as September of 2018, reflected "normal exam
13 findings," except that Plaintiff had a severely reduce range of motion in her right
14 shoulder. AR 19. The ALJ also noted that in October of 2018, Plaintiff's medical
15 exam revealed that she was able to "pick up a coin, manipulate a button, and turn a
16 knob using either hand," and that Plaintiff "had a normal exam of the spine and
17 negative straight leg raise." AR 19; AR 384–92. However, by April 2019, images
18 of Plaintiff's cervical spine "showed loss of cervical lordosis over the C5-6 disc
19 level" and "severely reduced right shoulder range of motion." AR 19.

1 Then, in June of 2019, Plaintiff underwent arthroscopy of the right shoulder,
2 and the ALJ found that “[t]reatment notes post-surgery shows improvement in
3 symptoms. AR 20. The ALJ supported this finding with four specific instances
4 where Plaintiff’s medical records show improvement in symptoms, though the
5 Court notes that several post-surgery medical records suggest otherwise. *See, e.g.*,
6 AR 503–04. Given this, and in light of the Court’s determination that the ALJ
7 improperly discounted ARNP Moss opinion that Plaintiff experienced ongoing
8 limitations, it is also appropriate on remand for the ALJ to reconsider this
9 determination in light of the record as a whole.

10 As to the second justification for discounting Plaintiff’s subjective symptom
11 testimony, the ALJ found that Plaintiff’s pursuit of a teaching degree undermined
12 Plaintiff’s complaints regarding the extent of her disability. AR 21. (“One would
13 not expect that a person would put in the time, effort, and money to obtain such a
14 degree if the person subjectively thought they were unable to use it.”). Here, the
15 Court agrees with Defendant that the ALJ properly discredited Plaintiff’s
16 complaints on this basis, as Plaintiff’s college pursuits are inconsistent with the
17 degree of disability she alleges. *See Mordean L. v. Comm’r of Soc. Sec.*, No. 19-
18 CV-277-FPG, 2020 WL 6886557, at *4 (W.D.N.Y. Nov. 24, 2020) (finding that the
19 ALJ properly considered the claimant’s college attendance as evidence that the
20 claimant was not completely disabled); *see also Molina v. Astrue*, 674 F.3d 1104,

1 1113 (9th Cir. 2012) (“Even where [] activities suggest some difficulty functioning,
2 they may be grounds for discrediting the claimant’s testimony to the extent that they
3 contradict claims of a totally debilitating impairment.”) (superseded on other grounds
4 by 20 C.F.R. § 404.1502(a)). Here, the Court notes that Plaintiff first alleged an
5 inability to work in 2013 yet was attending college at the time of the ALJ’s decision.
6 AR 18–19; AR 195. The Court commends Plaintiff for pursuing a teaching degree,
7 but it agrees with the ALJ that Plaintiff’s ability to attend college and her desire to
8 become a teacher rebut her claims of an inability to work at all.

9 The ALJ’s final justification is insufficiently explained and the ALJ should
10 reconsider this factor on remand. Specifically, the ALJ determined that Plaintiff’s
11 limited work history made it “difficult to correlate her current unemployment with
12 disability, as opposed to other reasons.” AR 21. Given this limited explanation, it is
13 not clear to what extent Plaintiff’s injuries may have affected her minimal work
14 history, as opposed to other reasons. As such, the Court does not find this
15 justification sufficiently specific, clear, and convincing.

16 **D. The Court need not evaluate the ALJ’s step five analysis**

17 Given the deficiency in the ALJ’s decision identified above, the Court need
18 not evaluate the ALJ’s conclusions at step five, which will necessarily depend on
19 the outcome of the preceding steps.

20 //

E. Remand, rather than an award of benefits, is appropriate

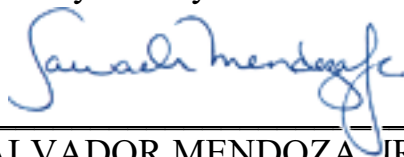
The Court declines to reverse for an immediate award of benefits. The Court cannot determine that remand would only delay an award to Plaintiff. *Cf. Lewin v. Schweiker*, 654 F.2d 631, 635 (9th Cir. 1981). The Court therefore remands so that an ALJ may make a determination based on further proceedings consistent with this Order.

Accordingly, **IT IS HEREBY ORDERED:**

1. Plaintiff's Motion for Summary Judgment, **ECF No. 19**, is **GRANTED**.
2. Defendant's Motion for Summary Judgment, **ECF No. 20**, is **DENIED**.
3. The Clerk's Office shall **ENTER JUDGMENT** for **PLAINTIFF** and **CLOSE** the file.
4. This matter shall be **REMANDED** to the Social Security Administration for further proceedings consistent with this order.

IT IS SO ORDERED. The Clerk's Office shall enter this Order and provide copies to all counsel.

DATED this 23rd day of May 2022.



SALVADOR MENDOZA, JR.
United States District Judge